

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT

List B

S CI 2013 01478

BETWEEN

THE TRUST COMPANY (NOMINEES) LIMITED (ACN 000 154 441)

Plaintiff

and

MICHAEL FUNG IN HIS CAPACITY AS RECEIVER AND MANAGER OF ALIGN FUNDS
MANAGEMENT LIMITED (RECEIVER AND MANAGER APPOINTED) (ACN 105 684 231) IN
ITS CAPACITY AS THE RESPONSIBLE ENTITY OF THE TIMBERCORP ORCHARD TRUST
AND ORS (ACCORDING TO THE SCHEDULE ATTACHED)

Defendants

CERTIFICATE IDENTIFYING EXHIBIT

Date of document: 21 March 2014

Filed on behalf of: The plaintiff

Prepared by:

Allens

Lawyers

101 Collins Street

Melbourne VIC 3000

Solicitor code: 21455

DX 30999 Melbourne

Tel 9614 1011 Fax 9614 4661

Ref CCHM:120338387

(Clint.Hinchen@allens.com.au)

This is the **Exhibit** marked '**CCH-23**' now produced and shown to **Clinton Charles Hinchen** at the time of swearing his affidavit on 21 March 2014.

Before me 

ELYSE KATE ADAMS

of 101 Collins Street, Melbourne
Victoria 3000

An Australian Legal Practitioner
within the meaning of the
Legal Profession Act 2004

**'CCH-23': a true copy of the
orders made by Justice Davies
in the Almond Land Rights
Appeal Proceeding dated 27
June 2011**

IN THE SUPREME COURT OF VICTORIA AT MELBOURNE
COMMERCIAL AND EQUITY DIVISION
COMMERCIAL COURT

LIST E
S CI 2009 10699

BETWEEN:

BOSI SECURITY SERVICES LIMITED
(ACN 009 413 852) AS TRUSTEE FOR AUSTRALIA
AND NEW ZEALAND BANKING GROUP LIMITED
(ACN 005 357 522) AND BOS INTERNATIONAL
(AUSTRALIA) LIMITED (ACN 066 601 250) AND
WESTPAC BANKING CORPORATION LIMITED
(ACN 007 457 141)

Plaintiff

- and -

AUSTRALIA AND NEW ZEALAND BANKING GROUP
LIMITED (ACN 005 357 522)
and others according to the schedule attached

Defendants

COURT RECORD OF HEARING

JUDGE:	The Honourable Justice Davies
DATE MADE:	27 June 2011
ORIGINATING PROCESS:	Originating Motion filed 15 December 2009
HOW OBTAINED:	On return of the orders of the Honourable Justice Davies made 15 June 2011
ATTENDANCE:	Mr. P Anastassiou of Senior Counsel with Mr. R G Craig and Ms. K Foley of Counsel for the Plaintiff Ms. W Harris of Senior Counsel for the First Defendant Dr. O Bigos of Counsel for the Second to Fourth Defendants Mr. G Bigmore of Her Majesty's Counsel with Mr. S Hopper of Counsel for the Fifth to Eighth Defendants
OTHER MATTERS:	A. The fifth to eighth defendants by their counsel hereby

jointly undertake that, subject to any other order of the Court, they will not lodge any further invoices for payment by the second defendant in respect of expenses incurred by Steven Lynch and Grey Barnden (**Growers' Experts**) in the course of this proceeding.

B. The plaintiff and the first defendant (**the Banks**) by their counsel, hereby jointly undertake that:

(i) subject to any other order of the Court and A. above, if the solicitors for the fifth to eighth defendants lodge any further invoices for payment by the second defendant in respect of legal expenses incurred in the course of this proceeding, the Banks will re-constitute the trust fund created by paragraph 7 of the orders of the Honourable Justice Robson dated 9 October 2009 in proceeding 9408 of 2009, in the amount of the value of those invoices; and

(ii) if the second, third or fourth defendants incur any further costs in relation to the proceeding in excess of the Retention Amount, after the date by which the Committee of Inspection or the Court determines the Liquidators' Amount in accordance with order 4, the Banks will pay to the second, third or fourth defendants those further costs (including legal costs) on a full indemnity basis.

C. The plaintiff by its counsel hereby acknowledges that any payments made to it in accordance with these orders are without prejudice to the rights of the second, third and fourth defendants to make claims against them arising out of the liquidation of the second defendant.

THE COURT ORDERS THAT:

1. The plaintiff and first defendant are entitled to the Net Proceeds of \$122,632,862 (calculated as \$128,000,000 of gross proceeds, less \$78,138 of settlement costs and \$5,289,000 of costs and expenses of the liquidators of Timbercorp Securities Limited (in liq), Almond Management Pty Ltd (in liq), Timbercorp Limited (in liq) and Almond Land Pty Ltd (in liq) which costs and expenses were approved by the Committee of Inspection of the second defendant at its meeting on 29 April 2010) held by the second defendant pursuant to paragraph 7 of the orders of the Honourable Justice Robson dated 9 October 2009 in proceeding 9408 of 2009:

- (a) *plus* all interest accrued thereon until the date provided for in orders 2 and 3;

- (b) *less* all amounts paid to Clarendon Lawyers in accordance with paragraph 3 of the orders made in this proceeding on 22 March 2011 and paragraph 10 of the orders made in this proceeding on 22 December 2009;
- (c) *less* the sum of \$25,425.00 (excl GST) paid in respect of mediator's fees pursuant to paragraph 11 of the orders of the Honourable Justice Davies dated 5 November 2010; and
- (d) *less* the sum of \$3,000,000 (**Retention Amount**)

(together, the **Judgment Proceeds**), in the amount and proportions set out in paragraphs 2 and 3 below.

2. On or before 4pm on 6 July 2011, the third and fourth defendants cause the second defendant pay the plaintiff the sum of 63.28% of the Judgment Proceeds.
3. On or before 4pm on 6 July 2011, the third and fourth defendants cause the second defendant pay the first defendant the sum of 36.72% of the Judgment Proceeds.
4. The third and fourth defendants are entitled to such part of the Retention Amount relating to their costs, expenses and remuneration (including GST) incurred in relation to the care, protection, preservation, realisation and/or distribution of the Net Proceeds (including the second, third and fourth defendants costs of and incidental to this proceeding and any costs associated with the determination of the Liquidators' Amount, on a full indemnity basis) as is approved at a meeting of the Committee of Inspection of the second defendant to be called by the third and fourth defendants or by order of the Court in default of such approval (**Liquidators' Amount**), and the plaintiff and the first defendant are entitled to the balance of the Retention Amount (including interest accrued thereon) (**Banks' Amount**).
5. The third and fourth defendants cause the second defendant to pay the Liquidators' Amount to the third and fourth defendants and the Banks' Amount to the Banks in the following proportions:
 - a. 63.28% to the plaintiff; and
 - b. 36.72% to the first defendant;

by 1 August 2011, or such later date as is agreed by the plaintiff and the first, second, third and fourth defendants, or by order of the Court in default of agreement.

6. The question of the costs of the proceeding, if any, is reserved.
7. On or before 4pm on 20 July 2011, the plaintiff and first defendant file and serve on the other parties and on the Growers' Experts engaged by the fifth to eighth defendants any affidavits and submissions in relation to the costs of the proceeding.
8. On or before 4pm on 17 August 2011, the second to eighth defendants file and serve any affidavits and submissions in relation to the costs of the proceeding.
9. The proceeding is adjourned to 10:00am on 22 August 2011, for the determination of the question of the costs of the proceeding, if any.

10. Liberty to apply.

DATE AUTHENTICATED: **5 July 2011**

PROTHONOTARY

JH 05/07/11

SCHEDULE OF PARTIES

S CI 2009 10699

BETWEEN:

BOSI SECURITY SERVICES LIMITED
(ACN 009 413 852) AS TRUSTEE FOR AUSTRALIA
AND NEW ZEALAND BANKING GROUP LIMITED
(ACN 005 357 522) AND BOS INTERNATIONAL
(AUSTRALIA) LIMITED (ACN 066 601 250) AND
WESTPAC BANKING CORPORATION LIMITED
(ACN 007 457 141)

Plaintiff

- and -

AUSTRALIA AND NEW ZEALAND BANKING GROUP
LIMITED (ACN 005 357 522)

First Defendant

ALMOND LAND PTY LTD (IN LIQUIDATION)
(ACN 091 460 392)

Second Defendant

MARK ANTHONY KORDA (IN HIS CAPACITY AS
LIQUIDATOR OF ALMOND LAND PTY LTD
(IN LIQUIDATION))

Third Defendant

LEANNE KYLIE CHESSER (IN HER CAPACITY AS
LIQUIDATOR OF ALMOND LAND PTY LTD
(IN LIQUIDATION))

Fourth Defendant

GRAHAM GOLDENBERG (IN HIS CAPACITY AS
REPRESENTATIVE OF THE GROWERS IN THE 2002
ALMOND PROJECT)

Fifth Defendant

CHRISTOPHER MARK LITTLE (IN HIS CAPACITY
AS REPRESENTATIVE OF THE GROWERS IN THE
2005 ALMOND PROJECT)

Sixth Defendant

CONSTANTINE MOSHOPOULOS (IN HER CAPACITY
AS REPRESENTATIVE OF THE GROWERS IN THE
2006 ALMOND PROJECT)

Seventh Defendant

DAVID BUTTERFIELD (IN HIS CAPACITY AS
REPRESENTATIVE OF THE GROWERS IN THE 2007
ALMOND PROJECT AND AS A REPRESENTATIVE OF
THE GROWERS IN THE 2002 PRIVATE OFFER
SCHEME)

Eighth Defendant

